

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	
)	CC Docket No. 96-45
TracFone Wireless, Inc.)	
)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of New York)	
)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida)	
)	
Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia)	
)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut)	
)	
Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts)	
)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama)	
)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina)	
)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee)	
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Petition for Designation as an Eligible Telecommunications Carrier in the State of Delaware for the Limited Purpose of Offering Lifeline Service to Qualified Households)	
)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire for the Limited Purpose of Offering Lifeline Service to Qualified Households)	
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Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania for the Limited Purpose of Offering Lifeline Service to Qualified Households)	
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Petition for Designation as an Eligible Telecommunications)
Carrier in the District of Columbia for the Limited Purpose of)
Offering Lifeline Service to Qualified Households)

OPPOSITION

The Public Service Commission of the District of Columbia (“DCPSC”) hereby submits this Opposition to the Petition for Modification of Annual Verification Condition (“Petition”) filed on April 27, 2009 by TracFone Wireless, Inc. (“TracFone”). This Petition was supplemented by an additional filing made by TracFone on June 1, 2009 (“Supplement”). The DCPSC opposes this Petition because of our concern about the potential for waste, fraud and abuse in the universal service Lifeline program.

In its filings, TracFone asks the Federal Communications Commission (“FCC” or “Commission”) to modify a condition placed on it by the FCC in the 2005 Order which granted TracFone’s Petition for Forbearance from the requirement that a carrier designated as an Eligible Telecommunications Carrier (“ETC”) for purposes of federal universal service support, provide service, at least in part, using its own facilities.¹ Subsequently, the Commission re-affirmed the condition in its 2008 order designating TracFone as an ETC in certain jurisdictions.² TracFone asks that the FCC modify the condition insofar as it requires that all Lifeline customers certify, on an annual basis, that they are the head of household and that they receive Lifeline-supported service only from TracFone. The FCC imposed this condition because of concerns about the effect of a grant of TracFone’s Petition on the universal service fund and the impact a grant may have on the consumers who will bear the burden of any increased contribution obligation.³ In the *TracFone Designation Order*, the Commission specifically recognized this condition as a safeguard against waste, fraud and abuse in the Lifeline program.⁴

¹ *Federal-State Joint Board on Universal Service, Petition of TracFone Wireless Inc. for Forbearance from 47 USC § 214(e) (1) (a) and 47 CFR § 54.201(i)*, 20 FCC Rcd 15095 (“*TracFone Forbearance Order*”).

² *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, et al*, 23 FCC Rcd 6206 (“*TracFone Designation Order*”).

³ *TracFone Forbearance Order* at ¶ 17-18.

BACKGROUND

TracFone is a wireless resale provider, focusing on prepaid services. It does not use its own facilities for the provision of service, but rather resells the services of other Commercial Mobile Radio Service (“CMRS”) providers. The Communications Act of 1934, as amended (the “Act”), provides that only an ETC is eligible to receive universal service support and that, to be an ETC, a carrier must provide service using its own facilities or a combination of its own facilities and resale of another carrier’s facilities.⁵ In order to receive support, in the form of Lifeline payments, TracFone required that the FCC forbear from applying Section 214 (e) of the Act. In doing so, the FCC found that TracFone’s prepaid feature may be an attractive alternative to Lifeline-eligible consumers who need the mobility, security and convenience of a wireless phone without usage charges or long term contracts.⁶ The Commission granted TracFone’s forbearance request with six conditions designed to compensate for the various concerns raised by the request. TracFone was required to:

- 1) provide its Lifeline customers with 911 and Enhanced 911 (“E911”) access regardless of activation status and availability of prepaid minutes;
- 2) provide its Lifeline customers with E911-compliant handsets and replace, at no additional charge to the customer, non-compliant handsets of existing customers;
- 3) comply with conditions 1 and 2 as of the date it provides Lifeline service;
- 4) obtain a certification from each Public Safety Answering Point (“PSAP”) where TracFone provides service confirming that TracFone complies with the first condition;

⁴ *TracFone Designation Order* at ¶ 20.

⁵ *TracFone Forbearance Order* at ¶ 3, citing 47 U.S.C. § 214(e) (1) (a).

⁶ To be clear, the DCPSC appreciates the advantages of the TracFone business model for the consumer and supports its provision of service to Lifeline customers in the District. Our concern is with possible abuse to the Lifeline program if the requirements placed upon TracFone are eased at this early stage in its operations.

- 5) require customers to self-certify at time of service activation and annually thereafter that they are the head of household and that they receive Lifeline service only from TracFone;
- 6) establish safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address.

Finally, the FCC required TracFone to submit a plan for compliance with these conditions within thirty days.

On October 11, 2005, TracFone submitted its compliance plan in which it stated that it would notify each Lifeline customer on the anniversary of his/her enrollment that the consumer must confirm his or her continued eligibility.⁷ TracFone also maintained that it “shares the Commission’s stated concern about abuse of the Lifeline program and that the potential for multiple Lifeline-supported services per consumer is an industry-wide problem.”⁸

On April 9, 2008, the FCC approved TracFone’s plan for complying with the conditions imposed in the *TracFone Forbearance Order*.⁹ The Commission also granted TracFone’s petitions to be designated an ETC in several states and the District of Columbia. In doing so, the FCC noted issues of TracFone non-compliance with the 911/E911 requirements imposed by the *TracFone Forbearance Order* and further conditioned TracFone’s designation to be an ETC.¹⁰ The Commission also renewed its concerns about waste, fraud and abuse in the Lifeline program and determined that it had “carefully crafted the conditions of the *Forbearance Order* to meet important regulatory goals.”¹¹ With the understanding that TracFone would comply with all the conditions imposed by the *TracFone Forbearance Order*, and with the caveat that the FCC may institute its own inquiry to “ensure that the universal service support an ETC receives is

⁷ TracFone Wireless, Inc.’s Compliance Plan, October 11, 2005 at p. 17.

⁸ *Id.*

⁹ *TracFone Designation Order* at ¶ 1 and 23.

¹⁰ *Id.* at ¶ 16.

¹¹ *Id.* at ¶ 22.

being used for the purpose for which it was intended,” TracFone was designated an ETC.¹²

Hardly a year following its federal designation as an ETC, and only months after initiating service, TracFone petitioned the FCC to allow a modification of the annual verification condition initially imposed by the *TracFone Forbearance Order*.¹³ Without giving any public interest justification for seeking freedom from one of the FCC’s “carefully crafted” conditions, TracFone sought to replace annual verification by every customer with annual verification by a “statistically-valid sample”. The TracFone Petition does not explain its proposal or give any information on how such a sample would be conducted.¹⁴

On June 1, 2009, TracFone supplemented its Petition for Modification to provide some justification for its request. It contends that it can only comply with the annual verification requirement by (1) contacting its customers via direct mail and requesting that they complete an enclosed form and send it back to TracFone or (2) contacting its customers by electronic mail. However, TracFone claims many of its customers do not have access to electronic mail and on average only 15 percent of customers who receive a direct mailing actually send a response. TracFone is thus concerned that as many as 85% of Lifeline customers will lose their Lifeline benefits even if they remain qualified. Because no other operational ETC is subject to the annual verification requirement, this places TracFone at a competitive disadvantage.¹⁵

ARGUMENT

1. The TracFone Petition Could Lead to Abuse of the Lifeline Program.

Lifeline is an important program for qualifying low income customers. It can help to provide them with access to the nationwide telecommunications system at

¹² *Id.* at ¶ 24.

¹³ TracFone Petition for Modification of Annual Verification Condition, April 27, 2009. We note that TracFone began service in the District of Columbia in June 2009.

¹⁴ If TracFone intends to use the procedures developed by the FCC in WC Docket 03-109, it should make this clear and it should also reveal the size of the sample it would use. *See Lifeline and Link-Up*, FCC 04-87, April 29, 2004, Appendix J.

¹⁵ Supplement to Petition, June 1, 2009 at p. 4.

affordable prices. TracFone has added an attractive element to Lifeline by offering prepaid wireless service without usage charges or the need for yearly contracts. However, the very flexibility which TracFone offers is a possible opportunity for abuse of the Lifeline program by people who “double dip” by receiving more than one Lifeline subsidy per household, or who continue the Lifeline program after they are no longer eligible. It is important to protect the integrity of the program by appropriate verification processes. The Commission’s rules allow for ETCs to verify annually continued eligibility using a statistically valid random sample of their Lifeline subscribers.¹⁶ However, these rules were designed for wireline ETCs, with a stationary customer base paying monthly bills, or wireless ETCs with long term users. When the Commission considered TracFone’s forbearance and designation requests it recognized that use of the Lifeline program by a prepaid wireless reseller with no facilities of its own posed additional challenges to be sure that the program did not suffer from fraud, waste or abuse. Nothing has changed in the months between the Commission’s reaffirming the TracFone conditions in the *Designation Order* and TracFone’s seeking to avoid those conditions. There is still the potential for abuse and TracFone should be held to the conditions it agreed upon when it became eligible to become an ETC.

Indeed, it is worth pointing out that TracFone has not yet even once complied with the Commission’s requirements for annual verification because barely a year has passed since it was granted federal ETC status, which preceded state certification and the initiation of service.¹⁷ Moreover, the conditions imposed by the FCC were derived from conditions suggested by TracFone itself when it was lobbying on behalf of its Petition for Forbearance.¹⁸ At that time TracFone offered that it “will require *every consumer* enrolled in its Lifeline program to verify his/her eligibility on an annual basis, or more frequently if required by the applicable state.”¹⁹

¹⁶ See 47 C.F.R. § 54.410 (c) (2).

¹⁷ We note that other compliance issues have plagued TracFone since it became eligible to become an ETC. See, e.g., *Pennsylvania Emergency Management Agency*, Petition to Reject TracFone’s Certification of Compliance with 911 Obligations in the Commonwealth of Pennsylvania, CC Docket 96-45, January 29, 2009.

¹⁸ See Letter of Mitchell F. Brecher, Attorney for TracFone, to Marlene Dortch, Secretary of the Federal Communications Commission, July 13, 2005.

¹⁹ *Id.* at p. 4, emphasis added.

It is clear that even TracFone recognized the potential for damage to the Lifeline system if its proposal were adopted without condition. Yet now, barely a year after becoming eligible to provide Lifeline service and before it has had to comply with its own conditions, TracFone wants out. Its Petition did not even bother to give a reason. Only weeks later, and probably after being instructed by the FCC staff, did TracFone try to provide a public interest justification for modification of the condition. Even that public interest reason, fear of losing Lifeline customers, is entirely speculative and uninformed by any experience. We remain concerned that TracFone's effort to abdicate its responsibilities has the potential to cause harm to the Lifeline program.

2. Other Ways of Contacting Customers Can Be Used.

TracFone claims that there are only two ways of contacting every customer: email and direct mail. According to TracFone, neither is efficient and could result in the loss of Lifeline benefits by eligible Lifeline consumers. Rather, TracFone claims that it should be permitted to conduct a statistically valid random sample, as other ETCs are permitted to do. Again, the DCPSC must point out that TracFone is not like other ETCs in that it does not provide service to customers who are either wireline users or who have long term contracts with CMRS providers. Moreover, TracFone is wrong; other ways of contacting customers are available. We remind TracFone of its recently granted waiver of the DTV Consumer Education Initiative.²⁰ There, TracFone made similar arguments about the inefficiencies of direct mail for contacting its customers about the then upcoming transition to digital television. In 2008, the FCC had determined that since low income persons would most likely be those receiving television signals over-the-air, those ETCs providing Lifeline and Link-Up service should be required to notify their customers on a monthly basis about the DTV transition. TracFone balked at the requirement because of the expense of sending monthly reminders since it does not send monthly bills.²¹

²⁰ *TracFone Wireless, Inc. Request for Waiver of Section 54.418 of the Commission's Rules*, 24 FCC Rcd 4180 (April 10, 2009). ("TracFone Waiver Request").

²¹ This appears to contradict an earlier representation made by TracFone. Again, while lobbying for its Forbearance Petition, TracFone claimed that it would have monthly contact with its customers. See Letter of Mitchell F. Brecher, Attorney for TracFone, to Marlene H. Dortch, Secretary of the Federal

Instead, TracFone proposed that it send SMS text messages to its customers twice a month, at no cost to the customer. There would be a size limitation on the SMS text message, but it could include the FCC phone number for additional information. The FCC found that a condensed text message would adequately achieve the goal of notifying the Lifeline customer of the DTV transition.²² In this instance, the DCPSC suggests that TracFone's idea can be modified to apply to the annual verification requirement. Frequent text messages informing Lifeline customers that they may lose their Lifeline benefits unless they contact TracFone can help to assure that every eligible consumer retains his or her Lifeline benefit.

3. Coordination with the States Can Also Help to Overcome Concerns About Lifeline.

Furthermore, coordination with the states can also help overcome concerns about waste, fraud and abuse in the Lifeline program. The FCC rules permit an ETC to verify directly with a state that a particular subscriber continues to be eligible by virtue of participation in a qualifying program or income level.²³ Moreover, TracFone has specifically stated that it "will work with appropriate state agencies" on enrollment issues.²⁴ In each jurisdiction that has a Lifeline program; TracFone could contact the administrator of the program to verify continued eligibility by cross-referencing state assistance rolls or other Lifeline eligibility programs. The state administrator could similarly guard against so-called "double-dipping" by comparing each ETC's Lifeline customer list. These coordination efforts would help to guard against abuses of the system.

Communications Commission, August 22, 2005 ("In fact, TracFone will have ongoing contact with its Lifeline customers since the *Lifeline programs will be purchased by eligible customers one month at a time.*") (emphasis added).

²² TracFone Waiver Request at ¶10.

²³ 47 C.F.R. §54.410 (c) (2).

²⁴ Ex Parte Supplement to Petition for Forbearance and Petitions for Designation as an Eligible Telecommunications Carrier, CC Docket 96-45, July 15, 2005, at p. 9.

CONCLUSION

The DCPSC opposes grant of the TracFone Petition for Modification of its annual verification condition because we are concerned about the potential for fraud, waste and abuse if there is no requirement that TracFone verify every customer's continuing eligibility for Lifeline. Lobbying before the Commission for forbearance, TracFone represented that it would contact every customer for that purpose. Now, it seeks to avoid conditions that were derived from what TracFone told the FCC it was able to do – and would do. There are no substantially changed circumstances that would warrant such a departure from its earlier promises. For the reasons stated herein, the DCPSC respectfully requests that the Commission reject the TracFone Petition.

Respectfully submitted,

**District of Columbia
Public Service Commission**



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July 6, 2009

CERTIFICATE OF SERVICE

I, Veronica M. Aheren, hereby certify that I have on this day served a copy of this Opposition of the District of Columbia Public Service Commission upon the following, by First Class Mail, postage prepaid:

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